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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA No.911/2004  
MA No.773/2004

New Delhi this the 9<sup>th</sup> day of December, 2004.

**HON'BLE MR. SHANKER RAJU, MEMBER (J)**  
**HON'BLE MR. S.K. MALHOTRA, MEMBER (A)**

1. Sumesh Pal Singh,  
Tel. Operator,  
Age 55 years  
S/o Dharam Pal Singh  
R/o H.No. 112, Balant Vihar,  
Jail Chungi, Meerut,  
Uttar Pradesh.
2. Dharam Vir Panwar  
Ex. L.D.C.  
S/o Late Mohar Singh  
Aged 59 years,  
R/o Roshanpur Dourli,  
Meerut, Uttar Pradesh.
3. Samender Pal Singh,  
s/o Rattan Singh,  
Age 58 years,  
R/o C-113, Ram Nagar,  
Kankarkheda,  
Meerut, Uttar Pradesh.
4. Jagdish Singh Sirohi,  
s/o late Salu Singh Sirohi,  
R/o 70, Ashok Prui,  
Kankarkheda, Meerut,  
Uttar Pradesh.

...Applicants

(By Advocate: Shri Narender Kaushik)

-versus-

1. Union of India,  
Through the Defence,  
Central Secretariat,  
South Block, New Delhi.

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2. Director General,  
EME, Army Hqrs., DHQ,  
P.O. New Delhi – 110 011.

3. C.D.A. (Army)  
Meerut Cantonment,  
Uttar Pradesh.

4. Commandant & M.D.  
510 Army Base Workshop  
Meerut Cantt.

...Respondents

(By Advocate: Shri K.R. Sachdeva)

### **ORDER (ORAL)**

**By Shri Shanker Raju, Member (J):**

MA No.773/2004 for joining together is allowed.

2. Applicants have impugned respondents' letter dated 22.1.2002 and an extract of letter dated 15.11.2001 whereby the decision in ***Director General of Posts & Ors. vs. B. Ravinderan and Anr.***, 1997 (1) SCC 641 has not been extended to them. They have further assailed recovery effected on account of wrong fixation of pay of re-employed pensioners.

3. Applicants had served the defence force in different periods and joined respondents as Telephone Operators. In the light of the decision of the Apex Court in Ravinderan's case (supra) their pay was fixed. While doing so their basic pay was fixed to the minimum of the pay scale, ignoring the acquired pension of service rendered with the Defence in terms of letter dated 8.2.1983. This principle was followed by the Government later on vide letter dated 29.6.1987 and rested at finality by the Apex Court in Ravinderan's case (supra), wherein it is



observed that subsequent clarifications of 1985 cannot be repugnant to the provisions of Civil Services Regulations and the order issued in 1983 cannot be superseded.

4. Applicants have sought benefit of the decision of the Apex Court in Ravinderan's case (supra). The respondents vide letter dated 23.2.99 clarified that the directions of the Apex Court would apply to the petitioners therein and in their letter dated 15.11.2001 it has been decided by the respondents that the judgment of the Apex Court was not a judgment in rem and would be applicable on case to case basis. The representations preferred when not responded and consequent recoveries had been effected, the present OA has been filed.

5. Learned counsel of applicants contended that as the decision of the Apex Court in Ravinderan's case (supra) is a binding precedent and a judgment in rem, would apply mutatis mutandis to the case of applicants who are similarly circumstanced. As such, whatever has been accorded in the letter dated 8.2.83 shall not be disturbed by any subsequent clarification. It is also stated that recovery without show cause notice is bad in law and when there is no misrepresentation or fraud played by applicants, recovery cannot be effected.

6. On the other hand respondents' counsel vehemently opposed the contentions and contended that the OA is premature as the respondents themselves have decided to waive of the recovery vide their letter dated 30.5.2003 and are still considering the case of the applicants in the light of the decision of the Ravinderan's case (supra).

7. We have carefully considered the rival contentions of the parties and considered the records.

8. We are of the considered view that in Ravinderan's case (supra) the Apex Court has upheld the validity of the order dated 8.2.1983 under which the pay etc. of the applicant had been fixed and subsequent clarifications have been declared to be ultra vires. This is a judgment in rem and would apply to similarly circumstance. As the applicants are identically situated, forming the same class, they cannot be deprived of the said decision in the light of the Constitutional Bench's decision of the Apex Court in **K.C. Sharma & Ors. vs. Union of India & Ors.**, 1998(1)SLJ 54.


9. Civil consequence, if accrues to a Government servant, should be preceded by a reasonable opportunity to show cause. As there has been a re-fixation and consequent recovery has been effected, without following due process of law, for want of show cause notice, action of the respondents is violative of principles of natural justice.


10. Moreover, we find that this wrong fixation is not at all attributable to applicants as they had neither misrepresented or played any fraud, recovery after such a long period of about 22 years cannot be countenanced. Hence, the objection raised by the learned counsel for the respondents are overruled.

11. However, we take cognizance of the fact that respondents have themselves initiated the process of waiving of the recovery and are examining the case of applicants in terms of the decision in

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Ravinderan's case. In this view of the matter, OA stands disposed of with a direction to the respondents that whatever recovery had been effected from applicants shall be restored back to them within a period of one month from the date of receipt of a copy of this order and thereafter respondents shall examine the case of applicants and take a final decision as to applicability of the decision of the Apex Court in Ravinderan's case on waiving of the recovery within a period of three months. No costs.

  
**(S. K. Malhotra)**  
Member (A)

  
**(Shanker Raju)**  
Member (J)

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